DOCUMENT RESUME

ED 117 211 UD 015 596

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TITLE	Laws, Ruling Set Bases for Bilingual Programming.
INSTITUTION	Kent State Univ., Ohio. Center for Educational Development and Strategic Services.
PUB DATE	Jun 75
NOTE	3p.; Article appeared in KEDS Annual Report, v2 n4 Jun 1975
EDRS PRICE	MF-$0.76 HC-$1.58 Plus Postage
DESCRIPTORS	Asian Americans; Biculturalism; *Bilingual Education; Bilingualism; Bilingual Schools; Bilingual Students; Civil Rights Legislation; *Court Litigation; Discriminatory Legislation; *Educational Legislation; *Educational Policy; *Minority Group Children; Puerto Ricans
IDENTIFIERS	Aspira et al v Board of Education City of New York; Civil Rights Act 1964 Title VI; Four Point Memorandum; Lau v Nichols; Serna v Portales

ABSTRACT

This document provides a detailed discussion of two laws and three court cases affecting the education of non-English speaking children. Title VI of the Civil Rights Act of 1964 addresses equal education opportunities for all Americans. The Four Point Memorandum issued by the Department of Health, Education and Welfare specifically deals with discrimination and denial of services on the basis of national origin. The Lau vs. Nichols legal case was filed in San Francisco to protect the rights of Chinese speaking students who were not receiving adequate education because of their ability to speak English. This landmark case in the movement for equal educational opportunity for non-English speaking people considered to have spurred bilingual education programming. The Serna vs. Portales case continued the push for bilingual education by directing its efforts to Spanish-speaking persons in New Mexico. A court evaluation of the merits of bilingual/bicultural education concluded that (1) bilingual education was the best way of meeting the needs of the Spanish-speaking children, and (2) ordered an expansion of these services. The Aspria et al vs. the Board of Education case was brought to court in the interests of youngsters born in Puerto Rico or recent adult immigrants who are also parents. The Aspira decision led to a consent decree signed by both parties to provide bilingual programming for New York City children needing help in language. (Author/AM)

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LAWS, RULINGS SET BASES

The legal decisions affecting the education of non-English speaking children have a recent history.

Overview: Title VI of the Civil Rights Act of 1964, addressed itself very generally to equal educational opportunities for all Americans. Later the May 25, 1970, Four Point Memorandum issued by the Department of Health, Education and Welfare (HEW) specifically dealt with discrimination and denial of services on the basis of national origin.

A landmark case in the movement for equal educational opportunity for non-English speaking people was the 1974 *Lau vs. Nichols* decision. It was filed in San Francisco to protect the rights of Chinese speaking students who were not receiving adequate education because of their inability to speak English. With this decision, bilingual education programming began to move forward.

The *Serna vs. Portales* case continued the push for bilingual education by directing its efforts for Spanish-speaking persons in New Mexico. Most recently, the *Aspira* decision in New York led to a consent decree signed by both parties to provide bilingual programming for New York City children needing help in language.

The following is a more detailed discussion of each of these laws and court cases:

Title VI of the Civil Rights Act of 1964 — Equal Educational Opportunities. No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

May 25 (1970) Four Point Memorandum. This HEW memo is designed to eliminate discrimination in the planning and operation of school programs. Entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," the regulation sets out the following requirements for compliance with Title VI:

Point One: Cites the school's responsibility for meeting the language need of students when the difference in the home language and the language used in school excludes children from effective participation in the educational program.

Points Two and Three: Essentially prohibit student assignment practices within schools which are based on youngsters lack of English language skills and which have long-term effects on their educational opportunities.

Point Four: Stresses the responsibility of the schools to inform parents of school activities in the language parents can understand.

Lau vs. Nichols, U.S. Supreme Court, January 21, 1974. Non-English-speaking Chinese students brought a class suit against the San Francisco School District. The suit charged that of the 2,856 Chinese-American students only 1,000 were being given additional courses in English even though all needed special help. Because of this action, the district was supposedly in violation of the 14th Amendment through unequal educational opportunity and of the Civil Rights Act of 1964 which could exclude federal funds to the schools for discriminating against groups on the basis of race, color or national origin.

The District Court denied relief, and the case went to the Court of Appeals which affirmed the lower court's decision. Because of the public importance of bilingual education, the U.S. Supreme Court agreed to hear the appeal, deciding it on the Civil Rights Act of 1964.

The Court considered San Francisco's views that in California English was the basic language of instruction and that bilingual education was authorized only so long as it would not interfere with the regular instruction in English.

However, it decided that service and treatment in education is not equal merely by providing all students with the same facilities, books, teachers and curriculum. However similar all of this may be — students are not. Youngsters who do not understand English are, by intent or oversight, effectively excluded from meaningful education.

The Court further concluded that no law can impose or presuppose that all

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children who enter an English dominant school will indeed have already acquired these skills.*

Serna vs. Portales, U.S. 10th Circuit Courts of Appeals New Mexico, May 1974. In this case Spanish-speaking plaintiffs claimed that the Portales Municipal Schools of New Mexico had long failed to take into consideration the specific needs of their children. The plaintiffs felt that, like *Lau vs. Nichols*, their constitutional right to equal protection (14th Amendment) was being violated as was their equal educational opportunity under Title VI of the 1964 Civil Rights Act. The District was ordered to:

- Reassess and enlarge its bilingual programs directed to the special needs of Latino students.
- Expand its bilingual/bicultural programs to all the other schools in its district having Spanish-speaking students.

FOR BILINGUAL PROGRAMMING

- Seek new funding sources to improve equality of education for Latino students.
- Increase recruiting efforts of bilingual/bicultural Latino teachers and/or obtain sufficient certification for Spanish-speaking teachers to allow them to teach in the district.

One important feature about this case is that bilingual/bicultural education was being offered on a very limited basis by the Portales Municipal School District. This gave the court the opportunity to evaluate the merits of bilingual education. It then concluded that bilingual education was the best way of meeting the needs of the Spanish-speaking children and ordered an expansion of these services.

Aspira, et al vs. Board of Education, City of New York, August 1974. This case was brought in the interests of youngsters born in Puerto Rico or recent adult immigrants who are also parents.

The complaint, filed in September 1972, alleged that the complaining children could speak little or no English. The schools they must attend were offering solely or mostly instruction in English. Results for these children were inadequate learning, lower achievement and poorer rates of promotion and graduation. Attendant consequences influenced college entrance, employment, civic participation and the quality of life in general.

The plaintiffs charged that these practices of unequal education violated both federal civil rights legislation (Civil Rights Act of 1964, the Four Point Memorandum, and regulations thereunder of the Department of Health, Education and Welfare) and the equal protection and due process clauses of the 14th Amendment.

It is important to note that whereas in the *Lau vs. Nichols* case no specific kind of relief was sought or ordered (leaving it to the expertise of the San Francisco School District to rectify the situation), in *Aspira* detailed kinds of relief were sought. Such instances of relief included a declaration of rights and an injunction requiring bilingual teaching and other special programs.

Both parties agreed to a consent degree in August 1974. According to the decision, New York City Schools were to provide the following:

- Intensive instruction in English (regular and as a second language).
- Instruction in subject areas in Spanish where need is apparent.
- Reinforcement of the pupil's use of Spanish and reading comprehension in Spanish where a need is indicated.
- Additionally, but not at the expense of the above three elements, students spending maximum time with other children so as to avoid isolation and segregation from their peers.

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*It further admonished against the use of a tracking system as an educational dead end or permanent track in providing a bilingual program for minority children. At least three previous cases in California (Santa Ana, Soledad and San Diego) had addressed themselves to this dilemma.